

## **REMARKS**

Claims 1-28 are now pending in the application. Minor amendments have been made to claims 5 and 8 to correct typographical errors. The amendments to the claims contained herein are intended to be of equivalent scope as originally filed and, thus, are not narrowing amendments. New claims 15-28 have been added for substantive examination. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-9, 13 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bergler (U.S. Pat. No. 3,431,686). This rejection is respectfully traversed.

Claims 1 and 2 recite "a base" and "a leg selectively connected to the base" as well as other limitations. Applicants respectfully submit that patentable weight must be given to the phrase "selectively connectable." MPEP § 2173.05(g) states that there is nothing inherently wrong with defining with some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). In a claim that was directed to a kit of components parts capable of being assembled, the court held that limitations such as 'members adapted to be positioned' and 'portions . . . being resiliently dilatable whereby said housing may be slidably positioned' serve to precisely define present structural attributes of interrelated components of the claimed assembly. *In re Venezia*, 540 F.2d 956, 189 USPQ 149 (CCPA 1976).

Accordingly, Applicants respectfully submit that Bergler '686 must disclose all of the elements of claims 1 and 2 in order for the Examiner to maintain an anticipation rejection. Applicants respectfully submit that Bergler discloses a frame 9 in Figures 8 and 9 having **integral portions described as upright frame legs 42, side rail 45 and horizontally bent leg 44**. Guide frame 9 is a continuous one-piece structure. Accordingly, Bergler does not disclose a leg selectively connectable to a base because legs 42 are always a portion of frame 9. Frame 9 of Bergler would become inoperable if legs 42 were disconnected from the remainder of the frame. As such, the Examiner may not adopt such an interpretation of the disclosure of Bergler. For Bergler to anticipate claims 1 or 2 of the present application, Bergler must disclose each and every element of the claims including the leg being selectively connectable to the base. Because Bergler does not provide such a disclosure, Applicants respectfully request withdrawal of the § 102 rejections.

With regard to claim 13, Applicants have explicitly stated that the method includes the step of "attaching the leg to the sander frame" among other limitations. Applicants respectfully submit that Bergler does not disclose a method including attaching the leg to the sander frame. For this step to be completed, the leg must be separate from the sander frame at some point in time. As described in detail above, Bergler discloses a one-piece frame and does not disclose the step of attaching a leg to the sander frame. Accordingly, Applicants respectfully request withdrawal of the § 102 rejections.

With reference to claim 14, Applicants claim "means for supporting the base in an orientation where the abrasive surface is exposed for access by a user." The


specification of the present application describes the means for supporting the base in an orientation where the abrasive surface is exposed for access by a user to include a leg that is initially spaced apart and separate from the sander frame. The leg is coupled to the base to support the base in an orientation where the abrasive surface is exposed for access by a user. Accordingly, Applicants respectfully request withdrawal of the § 102 rejections.

### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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